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No. 82-682

In the Supreme Court of the United States

OCTOBER TERM, 1982

WILLIAM B. RICHARDSON, PETITIONER

v.

DONALD T. REGAN, SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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Petitioner seeks review of the decision dismissing his suit for declaratory and injunctive relief as to his liability for taxes assessed pursuant to a prior decision of the United States Tax Court, and as to the constitutionality of the Internal Revenue Code and various statutory provisions dealing with the funding of the Central Intelligence Agency.[1] In the Tax Court case, the petitioner argued that he should be excused from paying his income taxes on the ground that

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[1]This suit is the latest in a series of proceedings instituted by the petitioner in an attempt to obtain a judicial ruling regarding the constitutionality of those funding provisions and to obtain information as to the amount of funds expended by that agency. See, e.g., *Richardson* v. *Sokol*, 285 F. Supp. 866 (W.D. Pa. 1968), aff'd, 409 F.2d 3 (3d Cir.), cert. denied, 396 U.S. 949 (1969); *United States* v. *Richardson*, 418 U.S. 166 (1974); *Richardson* v. *Spahr*, 416 F. Supp. 752 (W.D. Pa. 1976), cert. denied, 434 U.S. 830 (1977); *Richardson* v. *Commissioner*, 72 T.C. 818 (1979), appeal dismissed, No. 80-1665 (3rd Cir. Dec. 3, 1980.

the funding provisions of the Central Intelligence Agency Act of 1949, ch. 227, 63 Stat. 208, 50 U.S.C. (& Supp. IV) 403a *et seq.*, violate the Statement and Account Clause of the Constitution[2] because they permit receipts and expenditures of the Central Intelligence Agency to be charged against the appropriations of other government agencies without being publicly reported. The Tax Court rejected that contention and entered a decision sustaining the tax deficiencies for the years 1971 through 1974. These taxes were thereupon assessed and petitioner was billed for the amount (including interest) that assertedly remained due.

Thereafter, petitioner brought this suit in the United States District Court for the Western District of Pennsylvania in which he sought, inter alias, (1) a declaration that the Internal Revenue Code of 1954 is unconstitutional "in that it confiscates the income of taxpayers through surreptitious funding of government agencies" (Pet. App. A6); (2) a declaration that 50 U.S.C. 403f(a) and 403j, and 31 U.S.C. 1029 violate the Statement and Account Clause and various other provisions of the Constitution; (3) a declaratory judgment that an accounting of appropriations and expenditures for the Central Intelligence Agency is required by the Constitution; (4) a writ of mandamus requiring the Secretary of the Treasury to publish such a statement for the years 1971 through 1974 before attempting to enforce petitioner's tax obligations for those years; and (5) a preliminary restraining order prohibiting the Internal Revenue Service from levying against his wages pending resolution of the issues raised by his complaint (Pet. App. A11-A13).

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[2]United States Constitution, Article I, Section 9, Clause 7. In *United States* v. *Richardson*, 418 U.S. 166 (1974), this Court held that petitioner lacked standing to sue for a declaratory judgment that the Central Intelligence Agency Act violates the Statement and Account Clause of the Constitution.

The district court dismissed the suit. It first ruled that it lacked jurisdiction with respect to the tax claims raised by petitioner because the relief he sought is barred by the Anti-Injunction Act, 26 U.S.C. (Supp. IV) 7421(a), and the doctrine of sovereign immunity (Pet. App. A14-A15). As to the non-tax claims, the court ruled that, under this Court's decision in *United States* v. *Richardson, supra*, petitioner lacked standing to challenge the funding provisions in question since he had no personal stake in the outcome and had incurred no "particular, concrete injury" resulting from those provisions (Pet. App. A15-A20). The court of appeals affirmed (Pet. App. A21-A22).[3]

1. Section 7421(a) of the Internal Revenue Code of 1954 (26 U.S.C. (Supp. IV)) provides (with certain exceptions not pertinent here) that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." The bar of the Anti-Injunction Act may be avoided only if the plaintiff establishes (1) that under no circumstances can the government ultimately prevail with respect to its tax claims and (2) that equity jurisdiction otherwise exists—i.e., that the plaintiff will suffer irreparable injury for which there is no adequate remedy at law. *Enochs* v. *Williams Packing & Navigation Co.*, 370 U.S. 1 (1962); *Bob Jones University* v. *Simon*, 416 U.S. 725, 736 (1974). Moreover, the Declaratory Judgment Act (28 U.S.C. 2201) specifically withholds authority from the district court to issue declaratory judgments with respect to federal taxes. The reach of this exception is at least as broad as the prohibition of the Anti-Injunction Act. *Bob Jones University, supra*, 416 U.S. at 732-733 n.7.

In accordance with these statutory provisions, the district court correctly held that it lacked jurisdiction to adjudicate petitioner's suit for declaratory and other equitable relief

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[3]This affirmance is reported at 681 F. 2d 808 (1982).

aimed at restraining the assessment or collection of federal taxes. Petitioner does not, and plainly cannot, show that his case comes within the *Williams Packing & Navigation Co.* exception, for he cannot demonstrate that the government would not prevail as to the tax liabilities at issue. Indeed, the Tax Court's prior decision authoratively resolved the question of his liability for the deficiencies asserted for the years 1971 through 1974. While that decision does not bar petitioner from challenging assessments or collections for those years on the ground that they are in excess of the deficiencies as determined by the Tax Court, there is no showing that the refund suit remedy specifically permitted for such claims under Section 6512(a)(2) of the Internal Revenue Code of 1954 would not be fully adequate for this purpose.[4] Moreover, while the years covered by the Tax Court's decision are now otherwise closed, petitioner's constitutional claims for subsequent years could also be litigated either in the context of future Tax Court proceedings or in a refund suit brought in comformity with Section 7422 of the Internal Revenue Code (26 U.S.C. & Supp. IV) and 28 U.S.C. 1346(a)(1). Thus, it is clear that this suit fails to satisfy either requirement of the *Williams Packing & Navigation Co.* test, and, accordingly, is barred by the Anti-Injunction Act.

2. In *United States* v. *Richardson, supra*, this Court held that petitioner lacked standing to attack, under the Statement and Account Clause of the Constitution, the statutory provisions which protect the confidentiality of information regarding the funding provided to the Central Intelligence Agency. That case is dispositive as to petitioner's standing to assert virtually the identical non-tax claims

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[4]Petitioner also sought to compel the Commissioner to issue a corrected billing for the years covered by the Tax Court's decision on the ground that the original billing was excessive (Pet. App. A9, A11). The Internal Revenue Service agreed, in part, and issued a corrected bill in a smaller amount (*id.* at A15).

in the present suit (Pet. 11-15). To be sure, while *United States* v. *Richardson* specifically addressed only petitioner's attack upon 50 U.S.C. 403j(b), relating to the expenditure of funds by that agency, petitioner here also challenges 50 U.S.C. 403f(a), which pertains to the transfer of funds from other agencies to the Central Intelligence Agency, and 31 U.S.C. 1029, relating generally to the reporting of public expenditures.[5] But these statutory provisions are comparable. The reasoning of *United States* v. *Richardson* therefore compels a decision that the petitioner similarly lacks standing here to challenge the additional statutes he now seeks to place in issue. Accord: *Valley Forge Christian College* v. *Americans United For Sepration of Church and State, Inc.*, No. 80-327 (Jan. 12, 1982).

It is respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
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[5]This latter provision has recently been revised and will be codified at 31 U.S.C. 331. See Act of Sept. 13, 1982, Pub. L. No. 97-258, 96 Stat. 877.